

Appln. Serial No. 10/590,435
Amdt. Dated July 31, 2009

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REMARKS/ARGUMENTS

The Examiner issued a restriction requirement in the letter dated May 1, 2009 on the above-noted patent application and requested the Applicant to make an election among Groups I - IV. Applicant herein elects with traverse, Group I claims, and has withdrawn Group II - IV claims without prejudice with the intention of retaining the right of rejoinder. With regard to the request for an election of species, Applicant elects with traverse an antifibrillogenic agent for inhibiting amyloidosis and/or for cytoprotection comprising a peptide consisting essentially of SEQ. ID. NO. 28 (ANX, where X is any amino acid except cysteine).

As a result of the election and the election of species, Applicant has amended the claims without prejudice and with traverse as follows:

Claim 1 by replacing "selected from the group consisting of penta, tetra, and tri-peptides of truncated ANFLVH (SEQ. ID. NO. 11)" with "consisting essentially of ANX (SEQ. ID. NO. 28), wherein X is any amino acid except cysteine".

Claim 2, by further defining X as I or F. Support for I (Isoleucine or Ile) or F (Phenylalanine or Phe) can be found in the application as originally filed, for example, at page 10, line 15 of the application as published by WIPO, and SEQ. ID. NO. 24.

Claim 3 was amended to be similar in wording to claim 1 but refer specifically SEQ. ID. NO. 24.

Claim 4 was cancelled without prejudice.

Claim 9 was amended to be directed to SEQ. ID. NO. 28.

Claim 10 was amended to further define X of SEQ. ID. NO. 28 as I or F as noted above for claim 2.

Claim 11 was amended to be similar in wording to claim 9, but refer specifically to SEQ. ID. NO. 24.

Claim 12 was cancelled without prejudice.

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Claims 13 and 14 were amended by replacing "tripeptide" with "antifibrillogenic agent" to conform to wording of claim 1 from which they now depend. The claims were further amended to depend from claim 1 as opposed to claim 10.

Claims 15 and 16 were amended by replacing "peptide" with "antifibrillogenic agent" and by making them depend from claims 1 and 9 respectively.

The remaining claims were withdrawn without prejudice to preserve the right to rejoinder.

This election and claim amendments have been made without prejudice of pursuing other claim groupings either by rejoinder in the present application or by way of a divisional or continuation or continuation-in-part application, nor without prejudice of pursuing any other subject matter disclosed in the current claims or the application as filed.

The elections have been made with traverse.

Applicant respectfully traverses the Examiner's rejection as follows.

1. Pursuant to 35 U.S.C. 121, a request for restriction is not mandatory.

2. MPEP 803 states:

- (a) *Under the statute>, the claims of< an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § **> 802.01, § 806.06, and § 808.01<) or distinct (MPEP § 806.05 - § *>806.05(j)<). and*
- (b) *If the search and examination of **>all the claims in an< application can be made without serious burden, the examiner must examine *>them< on the merits, even though **>they include< claims to independent or distinct inventions. [Emphasis added].*

First with regard to the restriction request based on Group I to Group IV claims, the Examiner indicated that Group I claims (Claims 1- 4 and 9 – 16) are directed to "an antifibrillogenic agent for inhibiting amyloidosis and/or for cytoprotection"

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Group II claims are directed to a method for treating amyloidosis disorders in a patient comprising administering the agent of Group I claims. MPEP states that claims directed to a product and method of using a product can be allowed in one patent application. It is submitted that if Group I claims are examined and found allowable then so would Group II claims. As such, allowing both Group I and II claims in one application would not require additional searching and would not be an undue burden on the Examiner. It is submitted that the Examiner reconsider the request for restriction among Group I and Group II claims and allow them to be prosecuted together.

Similarly Group III claims are of for a process for preparing cell suitable for transplantation into a mammal using the antifibrillogenic agent of Group I claims.

Group IV claims are for a process drawn to a method for identifying an optimized peptide for inhibition of amyloidosis using the agent of Group I claims.

Although, the Applicant has withdrawn Group II – IV claims for now without prejudice, reconsideration by the Examiner of the restriction is requested the claims are requested to be rejoined and examined together in one application as if the Group I claims are allowed then so would, it is submitted, Group II – IV claims be allowable. It is submitted that it would not be an undue search burden on the Examiner.

With regard to the Examiner's request for an election of species, although Applicant has amended the claims without prejudice, Applicant does not believe that the claims as previously on file would be an undue burden to search in light of the context of the claims. Nor, for that matter would the claims as currently amended. Reconsideration of said election of species request is herein requested.

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The Commissioner is hereby authorized to charge any fee which may be required to fully reply and enter this response, including any claim fees or extensions of time fees, or otherwise to keep the application in good standing, to our firm's Deposit Account No. 15-0633.

Should the Examiner like to discuss the matter, she is kindly requested to contact Anita Nador at 416-601-7530 at her convenience.

Respectfully submitted,
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Dated: July 31, 2009

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